TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 156.

JOHN BECHTEL, GEORGE BECHTEL, JACOB SCHOEN, CHARLES SULZER, ADOLPH BOCK, AND CARL SCHNEIDER, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED JULY 7, 1877.

SUPREME COURT OF THE UNITED STATES.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between the United States of America, plaintiffs, and John Bechtel, George Bechtel, Jacob Schoen, Charles Sulzer, Adolph Bock, and Carl Schneider, defendants, a manifest error hath happened to the great damage of the said John Bechtel, George Bechtel, Jacob Schoen, Charles Sulzer, Adolph Bock, and Carl Schneider, defendants, as is said and as appears by their complaint, we, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States at the capital, in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the second Monday of October next, that the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 16' day of Feb'uary, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the United States the one hundred & first.

[SEAL.] JOHN I. DAVENPORT,
Clerk of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit.

The foregoing writ is allowed Feb'y 17, 1877.

SAM'L BLATCHFORD, *D. J.*

2 (Indorsed:) U. S. Supreme Court. John Bechtel et al., pl'ffs in error, vs. The United States of America, def'ts in error. Writ of error. Filed Feb'y 19, 1877. Edward Salomon, att'y for pl'ffs in error, No. 4 Wall street, New York City.

Due & timely service of a copy of the within writ of error is hereby admitted.

Dated N. Y., Feb. 19, 1877.

STEWART L. WOODFORD,
U. S. Attorney,
Per H.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John I. Davenport, clerk of the circuit court of the United States in and for the southern district of New York, second circuit, by
3 virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from four to forty-seven, inclusive, contains a true and complete transcript of the record and proceedings had in said court in the case of John Bechtel,

George Bechtel, Jacob Schoen, Charles Sulzer, Adolph Bock, and Carl Schneider, plaintiffs in error, against The United States of America, defendants in error, as the same remain of record and on file in the said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at the city of New York, in the fourth district of New York, in the second circuit, this 16th day of April, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the United States the one hundred and first.

[SEAL.] JOHN I. DAVENPORT,
Clerk.

4 U. S. circuit court for the southern district of New York, in the second circuit.

Pleas before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit, at the United States court buildings in the city of New York, at the term of April, 1876, to wit, of the eighteenth day of September, in the year of our Lord one thousand eight hundred and seventy-six.

Witness the honorable Alexander S. Johnson, one of the judges of the said circuit court.

JOHN I. DAVENPORT,
Clerk.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered that heretofore, to wit, on the ninth day of October, 1872, in April term of that year, before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit, at the United States court buildings in the city of New York, came the United States of America, by George Bliss, esq., their attorney, and brought into the said court, before the aforesaid judges thereof, then there, their certain declaration against Adolph Bock,
5 Carl Schneider, John Bechtel, Jacob Schoen, George Bechtel, and Charles Sulzer, defendants, said defendants, except said Bock, being in custody, &c., of a plea of trespass on the case upon promises; which said declaration follows in these words, that is to say:

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The United States of America, by George Bliss, their attorney for the southern district of New York, complain of John Bechtel, George Bechtel, Jacob Schön, and Charles Sulzer, being in custody, &c., of a plea that they render unto them the sum of twenty thousand dollars, which they owe to, and unjustly detain from, the said plaintiffs.

For that whereas heretofore, to wit, on the 25th day of November, 1871, in the city of New York, in the district aforesaid, the defendants, by their certain writing obligatory, sealed with their seals, and now here shown to the court, the date of which is the same day and year last aforesaid, acknowledged themselves (with Adolph Bock, and Carl Schneider, and said defendant John Bechtel, composing the firm of Bock, Schneider and Company, as principals, and said George Bechtel, Jacob Schön, and Charles Sulzer, as sureties) to be held and firmly
6 bound unto the plaintiffs in the full and just sum of twenty thousand dollars, money of the United States, to which payment well and truly to be made they bound themselves jointly and severally, their

joint and several heirs, executors, and administrators, firmly by these presents.

And the plaintiffs aver that said writing obligatory was and is subject to a certain condition thereunder written, whereby after reciting that said Bock, Schneider and Company are manufacturers of matches, and that under the provisions of the 161st section of an act entitled "An act to provide internal revenue to support the Government, to pay interest on the public debt, and for other purposes," approved June 30, 1864, the Commissioner of Internal Revenue is authorized, from time to time, to furnish, supply, and deliver to any manufacturer of friction or other matches, cigar lights, or wax tapers, a suitable quantity of adhesive or other stamps, such as may be prescribed for use in such cases, without prepayment therefor, on a credit not exceeding sixty days, requiring in advance such security as he may judge necessary to secure payment therefor to the Treasury of the United States within the time prescribed for such payment, and that adhesive stamps had been, or there-
7 after might be, delivered to said Bock, Schneider and Co. by virtue of such authority, it was provided that if the said Bock, Schneider and Co. should, on or before the tenth day of each and every month, make a statement of their account upon form 55½ of the Internal Revenue Bureau, and upon such other form or forms as might thereafter be substituted therefor, showing the balance due at the commencement of the month, the amount of stamps received, and the amount of money remitted by them during the month, and the balance due from said Bock, Schneider & Co. at the close of the month next preceding, and should do and perform all other acts of them required to be done in the premises according to law and regulations, should well and truly pay, or cause to be paid, to the Treasurer of the United States for the use of the United States all and every such sum or sums of money as they, the said Bock, Schneider & Co., might owe to the United States for adhesive or other stamps which had been or should be delivered to them, or which had been, or should be, forwarded to them according to their request or order within the time prescribed for payment for the same according to law, and should, and would, pay, or cause to be paid, to the said Treasurer for the use aforesaid each and every such
8 sum of money as should become due or payable to the United States at the time and on the days each sum should respectively become due or payable, then the said obligation was to be void and of no effect, otherwise to be and remain in full force and virtue.

And the plaintiffs aver that thereafter, to wit, on the 14th day of December, 1871, on the 1st day of February, 1872, and on the 29th day of February, 1872, respectively, there were delivered to said Bock, Schneider & Co., at their request, in the city of New York aforesaid, by the said Commissioner of Internal Revenue under the authority aforesaid, certain adhesive and other stamps of the value or quantity then and there, respectively, of eleven hundred dollars, twenty-two hundred dollars, and twenty-two hundred dollars, such as were prescribed for use in such cases.

And the plaintiffs, for assigning a breach of the condition of said writing obligatory, further say that said Bock, Schneider & Co. did not, on or before the tenth day of each and every month thereafter, make a statement of their account upon form 55½ of the Internal Revenue Bureau, or upon such other form or forms as were thereafter sub-
9 stituted therefor, and did not do and perform all other acts of them required to be done in the premises, according to law and regulations, and did not well and truly pay, or cause to be paid,

to the Treasurer of the United States for the use of the United States all and every such sum or sums of money as they, the said Bock, Schneider & Co., did owe to the United States for adhesive or other stamps which were delivered to them as aforesaid, or forwarded to them according to their request or order, within the time prescribed for payment according to law, and did not pay, or cause to be paid, to the said Treasurer as aforesaid, each and every such sum of money as did become due and payable to the United States at the time and on the days each sum did respectively become due and payable, but on the contrary thereof they, the said Bock, Schneider and Co., did not, nor did any one for them, make any statement of their account for a large quantity of the adhesive and other stamps delivered to them as aforesaid, to wit, the quantity of twenty-two hundred dollars,
10 and the other quantity of twenty-two hundred dollars aforesaid, and did not, nor did any one for them, well or truly pay, or cause to be paid, to the Treasurer of the United States the said sums of money, to wit, twenty-two hundred dollars and twenty-two hundred dollars, which they then and there owed to the United States for the adhesive and other stamps delivered to them as aforesaid, when the sum became due and payable, although the same then and there became due and payable, or at any time thereafter, but so to do utterly neglected and refused and still neglect and refuse.

Whereby the said writing obligatory became forfeited, and the said plaintiffs have sustained damages to a large amount, to wit, four thousand and four hundred dollars, and an action has accrued to the said plaintiffs to demand and have of and from the said defendants the said sum of four thousand and four hundred dollars, parcel of the sum above demanded. Yet the said defendants, although often requested so to do, have not yet paid the same or any part thereof to said plaintiffs,
11 but so to do have hitherto wholly neglected and refused, and still neglect and refuse, to the damage of the said plaintiffs four thousand and four hundred dollars, and therefore they bring their suit, &c.

And the said defendants, by Salomon & Burke, their attorneys, come and defend the wrong and injury when, &c., any say that the said supposed writing obligatory is not their deed, and of this they put themselves upon the country, &c.

And for a further plea in this behalf the said defendants, by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, say that the said plaintiffs ought not to have or maintain their aforesaid action thereof against them, because they say that the said Bock, Schneider & Co., in the said declaration mentioned, did from time to time and at all times after the making of the said writing obligatory and the said condition thereof, well and truly observe, perform, fulfill, and keep, all and singular, the articles, clauses, payments, conditions, and agreements in
12 the said condition of said writing obligatory specified, comprised, and mentioned, in all things therein contained, on their part and behalf to be observed, performed, fulfilled, and kept, according to the tenor and effect, true intent and meaning, of the said condition of said writing obligatory; and this the said defendants are ready to verify, wherefore they pray judgment if the said plaintiffs ought to have or maintain their aforesaid action against them, &c.

And for a further plea in this behalf the said defendants, by like leave of the court here for this purpose first had and obtained, say that the said plaintiffs ought not to have or maintain their aforesaid action

thereof against them, because they say that there were not delivered to said Bock, Schneider & Co., in said declaration mentioned, by the said Commissioner of Internal Revenue, the adhesive and other stamps of the value and quantity in the said declaration mentioned, and of this the said defendants put themselves upon the country, &c.

And the plaintiffs do the like, &c.

13 A day is given to the parties aforesaid, before the justices aforesaid, at the United States circuit court building, in the city of New York, on the fifth day of April, 1876.

And now at this day, to wit, on the fifth day of April, 1876, before the honorable Nathaniel Shipman, one of the justices of said circuit court, came as well the said plaintiffs as the said defendants, John Bechtel, Jacob Schoen, George Bechtel, and Charles Sulzer, by their attorneys; and the jurors of the jury summoned to try the said issues being called, also come, who, to speak the truth of the matters within contained, being chosen, tried, and sworn, say upon their oath, as to the issue within joined between the said parties to be tried by the country, by direction of the court, that the said writing obligatory is the deed of the said defendants, and that the same became forfeited in manner and form as alleged by the plaintiffs, and they assess the damages of the said plaintiffs by reason of the breaches of the condition of said writing obligatory aforesaid, over and above all their costs & charges by them about this suit in this behalf expended, to five

14 thousand four hundred and fifty-two $\frac{30}{100}$ dollars, subject to the opinion of the court upon a question reserved at the trial, as to the amount for which judgment shall be entered, and for said costs and charges to six cents.

But because it is unknown to the said court here whether or not the said defendants will be convicted of the premises aforesaid, whereof the parties aforesaid have put themselves upon the judgment of the court, therefore, let the giving of judgment in this behalf against the said defendants be stayed, until the question reserved aforesaid shall have been adjudged and determined, and because the said court, now here, is not advised what judgment to give of and upon the premises whereof the parties aforesaid have put themselves upon the judgment of the court, a further day is given to the said parties before the justice aforesaid at the court building aforesaid, on the 18th day of October, 1876, to hear judgment thereupon, for that the said court are not yet advised thereof, &c.

At which day, before the justice aforesaid, in the court building aforesaid, come the parties aforesaid, by their attorneys, and here-

15 upon all and singular the premises aforesaid whereon the said parties have put themselves upon the judgment of the court being seen and by the court now here fully understood, and mature deliberation being thereupon had, it appears to the said court here that the plaintiffs should have judgment for the amount of the verdict aforesaid and costs.

Therefore, it is considered that the said plaintiffs do recover against said defendants, John Bechtel, Jacob Schoen, Jacob Bechtel, and Charles Sulzer, their said damages, costs, and charges by the jurors aforesaid in form aforesaid assessed, and also sixty-two $\frac{41}{100}$ dollars for their said costs and charges by the said court now here adjudged, of increase to the said plaintiffs and with their assent; which said damages, costs, and charges in the whole amount to five thousand five hundred and fourteen $\frac{71}{100}$ dollars.

And the said defendants in mercy, &c.

Judgment signed this 19th day of September, 1876.

JNO. DEUL,
Dep'ty Clerk.

16 (Indorsed:) U. S. circuit court. The United States vs. Adolph Bock & als. Judgment record. George Bliss, U. S. attorney. U. S. int. rev. No. 8, p. 347. Filed Sep. 19, 1876.

17 In the circuit court of the United States for the southern district of New York. In the second circuit.

THE UNITED STATES OF AMERICA
against
JOHN BECHTEL, GEORGE BECHTEL, JACOB Schoen, and Charles Sulzer, impleaded with Adolph Bock and Carl Schneider.

And afterwards the said action came on to be tried at a stated term of the United States circuit court for the southern district of New York, in the second circuit, before Hon. Nathaniel Shipman, district judge, sitting as a circuit judge, and a jury impannelled therein, on the fifth day of April, 1876, in April term, 1876, the respective parties being represented by their counsel. And on said last-mentioned day the jury rendered a verdict for the plaintiffs as hereinafter stated, subject to the opinion of the court. And in the course of said trial, and before the rendering of the verdict therein, counsel for the defense did take and allege sundry exceptions to the rulings of the court, and to its refusal to direct a verdict for the defendants, and to its charge and direction to the jury to render a verdict for the plaintiffs, subject as aforesaid,
18 which said several exceptions are hereinafter severally set forth.

To maintain the issues on the part of the plaintiffs they offered in evidence the bond mentioned in the declaration in this cause, of which the following is a copy:

UNITED STATES INTERNAL REVENUE.

Know all men by these presents that we, Adolph Bock, Carl Schneider, and John Bechtel, composing the firm of Bock, Schneider & Co., and doing business under such firm name at the city of New York, as principals, and George Bechtel, Jacob Schoen, residing in Stapleton, Richmond Co., N. Y., and Charles Sulzer, of N. Y. City, as sureties, are held and firmly bound unto the United States of America in the full and just sum of twenty thousand (20,000) dollars, money of the United States, to which payment well and truly to be made, we bind ourselves, jointly and severally, our joint and several heirs, executors, and administrators, firmly by these presents, sealed with our seals and dated this 25th day of November, in the year one thousand eight hundred and seventy-one.

The condition of the foregoing obligation is such that whereas the said Bock, Schneider & Co. are manufacturers of matches; and whereas, under the provisions of the 161st section of an act entitled "An act to provide internal revenue to support the government, to pay in-
19 terest on the public debt, and for other purposes," approved June 30, 1864, the Commissioner of Internal Revenue is authorized from time to time to furnish, supply, and deliver to any manufacturer of friction or other matches, cigar-lights, or wax-tapers a suitable quantity

of adhesive or other stamps, such as may be prescribed for use in such cases, without prepayment therefor, on a credit not exceeding sixty days, requiring in advance such security as he may judge necessary to secure payment therefor to the Treasury of the United States within the time prescribed for such payment; and whereas adhesive stamps have been delivered, or hereafter may be delivered, to said Bock, Schneider & Co. by virtue of said authority:

Now, therefore, if the said Bock, Schneider & Co. shall on or before the tenth day of each and every month make a statement of their account upon form 55½ of the Internal Revenue Bureau, and upon such other form or forms as may hereafter be substituted therefor, showing the balance due at the commencement of the month, the amount of stamps received, and the amount of money remitted by them during the month, and the balance due from said Bock, Schneider & Co. at the close of the month next preceding, and shall do and perform all other acts
20 of them required to be done in the premises according to law and regulations, shall well and truly pay or cause to be paid to the Treasurer of the United States for the use of the United States all and every such sum or sums of money as they, the said Bock, Schneider & Co., may owe to the United States for adhesive or other stamps which have been or shall be delivered to them, or which have been or shall be forwarded to them according to their request or order, within the time prescribed for payment for the same according to law, and shall and will pay or cause to be paid to the said treasurer, for the use aforesaid, each and every such sum of money as shall become due and payable, then the above obligation to be void and of no effect; otherwise to be and remain in full force and virtue.

ADOLPH BOCK. [L. S.]
CARL SCHNEIDER. [L. S.]
JOHN BECHTEL. [L. S.]
JACOB SCHÖN. [L. S.]
GEORGE BECHTEL. [L. S.]
CHARLES SULZER. [L. S.]

Sealed and delivered in the presence of us—
JOHN HARMS.
FRITZ KLOPPEL.

(Affidavits of justification of sureties & certificate of clerk of U. S. district court, southern district of New York, as to sufficiency of sureties annexed.)

The plaintiffs further offered in evidence a transcript of certain
21 alleged accounts between the Treasury Department of the United States and the firm of Bock, Schneider & Co., certified on the eleventh day of October, 1872, and which is as follows:

Bock, Schneider & Co., in account with the United States office of Internal Revenue.

Date of delivery.	Value of stamps.	Date of remittance.	Amount deposited.	Commission.	Total credit.
Dec'r 14, 1871	1,100 00	April 4th, 1872	1,000 00		1,100 00
Febr'y 1, 1872	2,200 00			Balance	4,400 00
" 29, "	2,200 00				
	5,500 00				5,500 00
To balance	$4,400 00				

TREASURY DEPARTMENT,
OFFICE OF INTERNAL REVENUE,
Washington, D. C., September 27, 1872.

I certify that the above is a true statement of the account of Bock, Schneider & Co. for stamps, as above shown by the books of this office.

B. J. SWEET,
Acting Commissioner.

E. K. C.

TREASURY DEPARTMENT,
Register's Office, Oct. 11, 1872.

I hereby certify that the above is a true copy of the original on file in this office.

J. A. GRAHAM,
Acting Register.

22

TREASURY DEPARTMENT,
Register's Office, October 11, 1872.

Pursuant to the act of March 3, 1797, entitled "An act to provide more effectually for the settlement of accounts between the United States and receivers of public moneys," I, J. A. Graham, Acting Register of the Treasury Department, do hereby certify that the annexed copies of the reports of the Fifth Auditor of the Treasury numbered 3269 and 3309, as admitted and certified by the First Comptroller upon the accounts of Bock, Schneider & Co., late internal revenue stamp agents and manufacturers, at New York, N. Y., under official bond dated November 25, 1871, are a transcript from the books and proceedings of the Treasury, and that the copies of the receipts for stamps of said internal revenue stamp agents, hereto attached, are true copies of the original on file in this office.

J. A. GRAHAM,
Acting Register.

Be it remembered that J. A. Graham, esq., who certified the annexed transcript, is now and was at the time of doing so Acting Register of the Treasury of the United States, and that full faith and
23 credit are due to his official attestation.

In testimony whereof I, Geo. S. Boutwell, Secretary of the Treasury of the United States, have hereunto subscribed my name and caused to be affixed the seal of this department, at the city of Washington, this eleventh day of October, in the year of our Lord 1872.

[SEAL.] (Signed) GEO. S. BOUTWELL,
Secretary of the Treasury.

The defendants' counsel objected to the introduction of the said transcript in evidence on the ground that the statutes of the United States in reference to the admissions of such transcripts in evidence relate only to accounts between the United States of America and its officers or servants, and do not refer or relate to accounts between the government and private individuals.

The court overruled the said objection, and admitted the said transcript, and the defendants then and there duly excepted.

The plaintiffs further offered in evidence the following copies of the receipts alleged to have been signed by the firm of Bock, Schneider &

Co., and delivered to the Commissioner of Internal Revenue, for stamps alleged to have been delivered to Bock, Schneider & Co., which
24 copies are annexed and attached to said transcript and certified to as aforesaid by said Register to be true copies of the originals on file, and authenticated by the seal of the Treasury Department.

NEW YORK, *Dec'r 20th*, 1871.

SIR: Your letter of the 19th Dec'r has been received. I am also in receipt of the United States internal revenue stamps therein referred to, amounting to four hundred and seventy $\frac{00}{100}$ dollars, in part satisfaction of my order of the 11th inst.

I am, very respectfully,
(Signed) A. BOCK,
Bock, Schneider & Co.

To COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C.

No. 9812 ag.—$470.

NEW YORK, *Dec'r* 21, 1871.

SIR: Your letter of the 20th Dec'r has been received. I am also in receipt of the United States internal revenue stamps therein referred to, amounting to six hundred and thirty $\frac{01}{100}$ dollars, in full satisfaction of my order of the 11th inst.

I am, very respectfully,
25 (Signed) A. BOCK,
Bock, Schneider & Co.

To COMMISSIONER OF INTERNAL RENENUE,
Washington, D. C.

No. 9812 ag.—$630.

NEW YORK, *Feb'y* 3, 1872.

SIR: Your letter of the 2nd Febr'y has been received. I am also in receipt of the United States internal revenue stamps therein referred to, amounting to two thousand two hundred $\frac{00}{100}$ dollars, in satisfaction of my order of Jan'y 29th, 1872.

I am, very respectfully,
(Signed) A. BOCK,
Bock, Schneider & Co.

To COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C.

No. 180 ag.—$2,200.

NEW YORK, *March 6th*, 1872.

SIR: Your letter of the 1st March has been received. I am also in receipt of the United States internal revenue stamps therein referred to, amounting to two thousand two hundred $\frac{00}{100}$ dollars, in satisfaction of my order under date of Feb'y 26th.

I am, very respectfully,
26 (Signed) A. BOCK.
Bock, Schneider & Co.

To COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C.

No. 394 ag.—$2,200.

Also two certificates signed by the Fifth Auditor of the Treasury Department, dated July 3d, 1872, and October 5th, 1872, of which the following are copies:

No. 3269.

TREASURY DEPARTMENT,
FIFTH AUDITOR'S OFFICE,
July 3rd, 1872.

I hereby certify that I have examined & adjusted an account between the United States & Bock, Schneider & Co., match manufacturers, internal revenue stamp agent at New York, N. Y., for the quarter commencing Oct. 1, 1871, and ending Dec. 31st, 1871, find them chargeable therein as follows:

Bond $20,000, dated Nov. 25th, 1871.

To stamps, as per receipt dated Dec'r 20th, 1871	470	
" " " " " " " 21st, "	630	
		1,100

I also find them entitled to credit as follows:

Leaving balance due the United States with which they are to be charged 1,100

27 As appears from account & vouchers herewith transmitted for the decision of the Comptroller of the Treasury thereon.

J. H. ELA,
Auditor.

To the FIRST COMPTROLLER OF THE TREASURY.

TREASURY DEPARTMENT,
COMPTROLLER'S OFFICE,
July 11th, 1872.

$1,100.

I admit and certify that a balance of eleven hundred dollars is due to the United States, as stated in the foregoing report.

WM. HEMPHILL JONES,
Acting Comptroller.

To the REGISTER OF THE TREASURY.

Statement of differences.

No statements received.

TREASURY DEPARTMENT,
FIFTH AUDITOR'S OFFICE,
July 3, 1872.

Examined & stated by—

VAL. N. STILES.

COMPTROLLER'S OFFICE,
July 11th, 1872.

Examined and reported by—

M. WOODWORTH.

No. 3309.—For suit.

TREASURY DEPARTMENT,
FIFTH AUDITOR'S OFFICE,
October 5th, 1872.

28 I hereby certify that I have examined & adjusted an account between the United States & Bock, Schneider & Co., late match manufacturers, internal revenue stamp agent at New York, N. Y., for the period commencing Jan'y 1st, 1872, & ending April 4th, 1872, & find them chargeable therein as follows:

Bond $20,000, dated Nov. 25th, 1871.

To balance due from them per report No. 3269 (Register's certificate)	$1,100	
To stamps as per receipt dated Febr'y 3, 1872	2,200	
" " " " " " March 6, "	2,200	
		$5,500
I also find them entitled to credit as follows:		
By cash deposited, as per certificate No. 7476, covering warrant No. 630, 1st quarter, 1872	1,000	
By ten per cent. commission on amount deposited	100	
		$1,100
Leaving balance due the United States, with which they are to be charged		4,400

As appears from the account & vouchers herewith transmitted for the decision of the Comptroller of the Treasury thereon.

J. H. ELA,
Auditor.

To the FIRST COMPTROLLER OF THE TREASURY.

TREASURY DEPARTMENT,
COMPTROLLER'S OFFICE,
October 7th, 1872.

$4.400.

29 I admit and certify that a balance of forty-four hundred dollars is due to the United States, as stated in the foregoing report.

WM. HEMPHILL JONES,
Acting Comptroller.

To the REGISTER OF THE TREASURY.

Statement of differences.

No statement received.

TREASURY DEPARTMENT,
FIFTH AUDITOR'S OFFICE,
October 5th, 1872.

Examined and stated by—

VAL. N. STILES.

COMPTROLLER'S OFFICE,
October 7th, 1872.

Examined and reported by—

M. WOODWORTH.

(Here follows at length, in form & substance, the same certificate set forth on pages six & seven of this bill of exceptions.)

To all which papers the defendants' counsel objected, upon the ground that the certificate attached thereto did not render said papers evidence without further proof and proof of the handwriting of Bock, Schneider & Co.

The court admitted the said papers in evidence, overruling the said objection, and the defendants' counsel then and there duly excepted.

The plaintiffs thereupon rested their case. The foregoing has been all the evidence offered on their part on said trial.

The defendants offered no testimony, but asked the court to direct a verdict for the defendants, on the ground that there was no evi-
30 dence whatever to show any breach of the bond sued upon and mentioned in the declaration, or to show any amount due upon it, the transcript of the Treasury accounts being no evidence.

The court denied said motion, and the defendants' counsel then and there duly excepted.

The defendants' counsel then asked the court to charge the jury and direct that the defendants were entitled to have deducted from the balance shown to be due by the Treasury accounts ten per cent. commission on the same as allowed by the act of Congress of June 30, 1864, amended in 1870. and incorporated in the Revised Statutes under section 3425, page 677.

The court, after argument, denied said motion, and the defendants' counsel then and there duly excepted.

The court thereupon directed the jury to find a verdict for the plaintiffs for the sum of four thousand and four hundred dollars, principal, with interest from October , 1872, to the date of said trial, at seven per cent. per annum, being the sum of one thousand and fifty-two dollars and thirty cents, making a total of five thousand and four hundred and fifty-two dollars and thirty cents, subject to the opinion of the court upon the questions of law raised by the defendants, to which direction the defendants then and there duly excepted.

31 The jury rendered a verdict as directed.

The court, subsequently, on the eighteenth day of September, 1876, ordered that the judgment be entered upon the verdict of the jury as of the date of said verdict, and for the amount named therein.

To which order and directions the defendants' counsel did then and there duly except.

And inasmuch as the aforesaid matters of fact and law and the said several exceptions do not appear by the record of said trial and verdict, therefore, on the prayer of the said defendants, by their counsel, the said judge has signed the foregoing bill of exceptions this 18th day of September, 1876, at the April term of said court as aforesaid.

N. SHIPMAN, [L. S.]
Judge.

I consent to the signing of the above bill of exceptions.
Jan'y 12, 1877.

GEORGE BLISS,
per H.

32 (Indorsed:) United States circuit court New York, southern district. The United States of America against John Bechtel and others. Bill of exceptions. Filed Feb'y 2, 1877. Nunc pro tunc as of Sept. 17, 1876. Salomon & Burke, attorneys for defendants, No. 4 Wall street, New York.

I hereby consent to the filing nunc pro tunc of the within bill of exceptions as of a day prior to the entry of the judgment herein, to wit, the 17th day of September, 1876.

R. W. S. STEWART L. WOODFORD,
U. S. Att'y.

33 In the circuit court of the United States for the southern district of New York.

THE UNITED STATES OF AMERICA, PLAINTIFFS,
vs.
JOHN BECHTEL, GEORGE BECHTEL, JACOB Schoen, Charles Sulzer, Adolf Bock, and Carl Schneider, defendants.

Whereas a judgment was recovered in the above-entitled action on the 18th day of September, 1876, against the above named defendants; and whereas the settlement of the bill of exceptions in said action was delayed and said bill of exceptions was afterwards filed nunc pro tunc as of a day prior to the entry of said judgment; and whereas said defendants intended to bring said judgment for review before the Supreme Court of the United States, by writ of error, in time to have the same effectual as a supersedeas and in proper time caused to be exe-
34 cuted a proper bond to have such writ operate as a supersedeas and the sureties thereon to justify, but the issuing of said writ of error was delayed by the settlement of said bill of exceptions beyond the time when by law it might operate as a supersedeas:

Therefore it is stipulated and agreed by and between the attorneys of the respective parties to this action that said writ of error may now be issued with the same force and effect as if issued on the 23d day of September, 1876, and that the bond required by law to make said writ of error operate as a supersedeas, if it had been issued within the proper time, may now be filed nunc pro tunc as of the 23d day of September, 1876, and shall be as effectual as if said writ of error had been issued and said bond filed on said last mentioned day.

Feb'y 15, 1877.

STEWART L. WOODFORD,
U. S. Dist. Att'y.
SALOMON & BURKE,
Def'ts' Att'ys.

35 (Endorsed:) U. S. circuit court, southern dist. of N. Y. The United States of America vs. John Bechtel et al. Stipulation. Salomon & Burke, def'ts' attorneys, No. 4 Wall st., N. Y. Filed Feb'y 15, 1877. E. & A. D. No. 3, p. 15.

36 Circuit court of the United States of America for the southern district of New York, in the second circuit.

THE UNITED STATES OF AMERICA
vs.
JOHN BECHTEL, GEORGE BECHTEL, JACOB Schoen, Charles Sulzer, Adolph Bock, and Carl Schneider.

Know all men by these present that we, John Bechtel, George Bechtel, Jacob Schoen, all of Stapleton, in the county of Richmond and State of New York, as principals, and Joseph Rübsam, of Stapleton, in the county of Richmond and State of New York, and John Lambert, of Stapleton, in the county of Richmond and State of New York, as sureties, are held and firmly bound unto *to* the United States of America in the sum of six thousand and five hundred dollars, to be paid to the said

United States of America, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the fifteenth day of February, in the year one thousand eight hundred and seventy-seven.

37 Whereas the above-named principals, defendants in the action above entitled, have prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York, on the eighteenth day of September, 1876; and whereas by a stipulation filed in the office of the clerk of the circuit court of the United States for the southern district of New York, it has been agreed between the attorneys for the respective parties that said writ of error may be issued and this writing obligatory filed nunc pro tunc as of the twenty-third day of September, 1876:

Now, therefore, the condition of this obligation is such, that if the above-named principals, defendants, shall prosecute their writ of error to effect, and answer all damages and costs, and just damages for delay, if they fail to make their plea good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

JOHN BECHTEL. [L. S.]
GEORGE BECHTEL. [L. S.]
JACOB SCHOEN. [L. S.]
JOSEPH RÜBSAM. [L. S.]
JOHN LAMBERT. [L. S.]

Sealed and delivered, and taken and acknowledged this 15th day of February, 1877.

[L. S.]

RUDOLF DULON,
Notary Public, No. 4 Wall st., New York.

38 The foregoing bond is approved as to form and amount and sufficiency of sureties.

February 17, 1877.

SAM'L BLATCHFORD, *D. J.*

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Joseph Rübsam and John Lambert, both of Stapleton, in the county of Richmond and State of New York, being duly and severally sworn, each for himself deposes and says that he resides in Stapleton aforesaid, and is a freeholder therein and in this State, and that he is worth the sum of thirteen thousand dollars over and above all his just debts and liabilities.

JOSEPH RÜBSAM.
JOHN LAMBERT.

Sworn to before me this fifteenth day of February, 1877.

RUDOLF DULON,
Notary Public, No. 4 Wall street, New York.

39 (Indorsed:) U. S. circuit court, New York southern district. The United States of America vs. John Bechtel and others. Bond. Salomon & Burke, attorneys for defendants, No. 4 Wall street, New York. Filed Feb'y 17, 1877.

40 Supreme Court of the United States, of October term, in the year of our Lord one thousand eight hundred and seventy-seven.

JOHN BECHTEL, GEORGE BECHTEL, JACOB Schoen, Charles Sulzer, Adolph Bock, and Charles Schneider, plaintiffs, in error,
vs.
THE UNITED STATES OF AMERICA, defendants in error.

Afterwards, to wit, on the second Monday of October, in October term, in the year of our Lord one thousand eight hundred and seventy-seven, before the justices of the Supreme Court of the United States, at the Capitol in the city of Washington, come the said John Bechtel, George Bechtel Jacob Schoen, Charles Sulzer, Adolph Bock, and Charles Schneider, by Edward Salomon, their attorney, and say that in the record and proceedings aforesaid there is manifest error in this, to wit:

1st. That the court below erred in admitting at the trial a transcript of certain alleged accounts between the Treasury Department of the United States and the firm of Bock, Schneider & Co., certified on the eleventh day of October, 1872, a copy of which transcript is set forth in the bill of exceptions signed by the Hon. Nathaniel Shipman, judge, before whom the said cause was tried.

41

2nd. That the said court below erred in receiving in evidence at said trial copies of certain alleged receipts, purporting to have been signed by the firm of Bock, Schneider & Co., and delivered to the Commissioner of Internal Revenue for certain stamps alleged to have been delivered to Bock, Schneider & Co., which copies were annexed and attached to said transcript, and are set forth in said bill of exceptions.

3d. That said court below erred in refusing to direct the jury at said trial to bring in a verdict for the defendants below, because there was no evidence of any breach of the condition of the bond, and no evidence of any amount due upon said bond.

4th. That said court below erred in refusing to charge and direct the jury at said trial that the defendants below were entitled to have deducted from the balance appearing due by the Treasury accounts ten per cent. commission on the same, as allowed by the act of Congress of June 30, 1864, amended in 1870, and incorporated in the Revised Statutes under section 3425.

42

5th. That the said court below erred in directing the jury at said trial to find a verdict for the plaintiffs for the sum of five thousand four hundred and fifty-two $\frac{30}{100}$ dollars principal, as in said bill of exceptions stated.

6th. That said court below erred in subsequently ordering judgment to be entered upon the said verdict of the jury.

And the said plaintiffs in error pray that the judgment aforesaid be reversed, annulled, and altogether held for naught, and that they may be restored to all things which they have not by occasion of the said judgment.

EDWARD SALOMON,
Attorney for Plaintiffs in Error, No. 4 Wall st., New York City.

43 (Indorsed:) U. S. Supreme Court. John Bechtel and others, pl'ffs in error, vs. The United States of America, def'ts in error. Assignment of errors. Edward Salomon, att'y for pl'ffs in error, No. 4 Wall st., N. Y. Filed Mar. 27, 1877.

44 Supreme Court of the United States.

JOHN BECHTEL, GEORGE BECHTEL, JACOB Schoen, Charles Sulzer, Adolph Brock, and Charles Schneider, plaintiffs in error,
vs.
THE UNITED STATES OF AMERICA, DEFENDants in error.

And afterwards, to wit, on the second Monday of October, in October term, in the year of our Lord one thousand eight hundred and seventy-seven, before the justices of the Supreme Court of the United States, at the Capitol in the city of Washington, come the United States of America, by their attorney, Stewart L. Woodford, and say that there is no error, either in the record or proceedings aforesaid, in manner and form as assigned by the plaintiffs in error aforesaid, or in the giving of the judgment aforesaid, and pray that the record and proceedings aforesaid be examined, and that the judgment aforesaid, in form aforesaid, may be in all things affirmed, &c.

March 28th, 1877.

STEWART L. WOODFORD,
U. S. Attorney.

45 (Indorsed:) U. S. Supreme Court. John Bechtel & als. vs. The United States of America. Joinder in error. Stewart L. Woodford, U. S. att'y. Filed Mar. 29, 1877.

46 UNITED STATES OF AMERICA, *ss:*

To the United States of America, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the office of the clerk of the circuit court of the United States for the southern district of New York, wherein John Bechtel, George Bechtel, Jacob Schoen, Charles Sulzer, Adolph Bock, and Carl Schneider are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness Hon. Samuel Blatchford, judge of the district court of the United States for the southern district of New York, this 17th day of February, A. D. 1877.

SAM'L BLATCHFORD.

47 Due & timely service of a copy of the within citation is hereby admitted. Dated N. Y., Feb'y 19, 1877.

STEWART L. WOODFORD,
U. S. Attorney,
Per H.

(Indorsed:) U. S. Supreme Court. John Bechtel et al., pl'ffs in error, vs. The United States of America, def'ts in error. Citation. E. & A. D. No. 3, p. 15. Edward Salomon, att'y for pl'ffs in error, No. 4 Wall street, New York City. Filed Feb'y 19, 1877.

(Indorsement on cover:) No. 156. John Bechtel, George Bechtel, Jacob Schoen, Charles Sulzer, Adolph Bock, and Carl Schneider, plaintiffs in error, vs. The United States. S. New York, C. C. U. S. Filed 7th July, 1877.

SUPREME COURT OF THE UNITED STATES.

No. 156.

John Bechtel, George Bechtel, Jacob Schoen, Charles Sulzer, Adolf Bock and Carl Schneider,

Plaintiffs in Error,

vs.

The United States of America,

Defendants in Error.

PHILADELPHIA BAR ASSOCIATION

Brief for Plaintiffs in Error.

EDWARD SALOMON,

Attorney for Plaintiffs in Error,

115 Broadway, N. Y. City.

Supreme Court of the U. S.

No. 156.

JOHN BECHTEL, GEORGE BECHTEL, JACOB SCHOEN, CHARLES SULZER, ADOLF BOCK and CARL SCHNEIDER,

Plaintiffs in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendants in Error.

BRIEF FOR PLAINTIFFS IN ERROR.

STATEMENT OF THE CASE.

In November 1871, Adolf Bock, Carl Schneider and John Bechtel, constituting the firm of "Bock, Schneider & Co," manufacturers of matches in the City of New York as principals, and Jacob Schoen, George Bechtel and Charles Sulzer, as sureties, executed a bond to the United States in the penalty of twenty thousand dollars, under Sec. 161 of Chap. 173 of the Acts of Congress of 1864, to secure the payment of such sum or sums of money, as Bock, Schneider & Co. might owe to the United States for stamps which should be delivered to them. Upon this bond an action was brought in

5 the United States Circuit Court for the Southern District of New York by the defendants in error for certain alleged breaches, the principal of which was alleged to be the non-payment of two thousand two hundred dollars, and two thousand two hundred dollars which Bock, Schneider & Co. were alleged to owe to the United States for stamps delivered to them under said bond. The pleadings put in issue the alleged breaches, and the case was tried in the Court below in April, 1876, before Hon. Nathaniel
6 Shipman, Judge, and a jury. The United States Attorney offered in evidence at the trial certain transcripts from the treasury department purporting to show that Bock, Schneider & Co. received, February 1st and 29th, 1872, stamps of the value of four thousand four hundred dollars, which remained unpaid, and also offered in evidence certain certified copies of letters purporting to have been written by Bock, Schneider & Co. to the Commissioner of Internal Revenue, acknowledging, amongst others, the receipt of these stamps, and also offered certain
7 certificates of the treasury department purporting to show the balance of four thousand four hundred dollars due the United States for these stamps. The counsel for the defendants below objected to the introduction and competency of such evidence, as the case was not one covered by Sec. 886 of the Revised Statutes, but the evidence was admitted and the verdict rendered upon it. Proper exceptions were taken to such and other rulings of the Court concerning the same point.

8 It appeared by the treasury transcripts that until their default Bock, Schneider & Co. had been allowed the ten per cent. commissions prescribed by Sec. 161, of the Acts of 1864, above mentioned, and it was conceded and assumed at the trial by counsel and Court that Bock, Schneider & Co. had furnished their own die, which entitled them to such commissions under the law. The counsel for the defendants below, therefore asked the Court to instruct the jury

to allow the ten per cent. commissions upon the four thousand four hundred dollars which the Court refused and the defendants' counsel duly excepted to such ruling. 9

Point I.

The Court below erred in allowing in this case the treasury transcripts and certified copies of letters and certificates to be given in evidence. 10

Sec. 886 of the Revised Statutes, which embodies the Act of Congress of March 3rd, 1797, Chap. 20, Sec. 1 and 2, as amended by the Act of March 3rd, 1817, Chap. 45, Sec. 11, is confined to suits brought "in any case of delinquency of a revenue officer or *other person accountable for public money.*" Bock, Schneider & Co., the manufacturers, were not revenue officers nor was the money which they owed, 11 in any just or proper sense, public money until it was paid by them Under the bond which they had given, and under Sec. 161, Chap. 173, of the Acts of 1864, they simply stood in the relation of contract debtors to the government for the price of any stamps which they might receive. Whenever they received stamps, such stamps became their property, absolutely and unqualifiedly, and *they became indebted for the price of them* to the government, such debt being payable by them sixty days after the receipt of the stamps. Whatever property 12 or money Bock, Schneider & Co. possessed was their own, and no part of it became public money until they parted with it to the government. The case is exactly like that of any man who sells property to another on credit, the vendee giving the vendor security in the shape of a bond with sureties for the payment of the purchase money. It would be absurd to claim that in such a case the debtor

13 was accountable to the creditor for his, the creditor's, money. When we speak in legal and ordinary parlance of a person being accountable to another for the latter's money, we always mean that the money belongs to or is the property of the latter. *When a person simply owes a debt to another, we never say that he is accountable to him for his creditor's money.* If a principal gives to his agent money to be used for a particular purpose, or if an agent receives money which belongs to the prin-
14 cipal, then we have a case where the agent is accountable to his principal for the latter's money. And so, where a revenue officer or other person receives money from the government for a particular purpose, or for the government from other persons, he is accountable for such money as public money, because it belongs, not to him, but to the government. But that is not this case at all. The Statute authorizes the Commissioner of Internal Revenue to "*sell*" *the stamps* for cash, and then provides that he may sell them to manufacturers *on*
15 *a credit* upon such security as he may judge necessary to secure payment therefor to the United States. *The very language of the Statute creates the simple relation of debtor and creditor*, and it is respectfully submitted that neither the language nor the spirit of this Act of Congress can make the manufacturer a person accountable for public money, *i. e.*, money of the United States.

Suppose a Statute should provide for the arrest of a person accountable for public money, would it be
16 claimed for a moment that the persons composing the firm of Bock, Schneider & Co. could be arrested for this alleged indebtedness to the goverment? It seems hardly possible that any Court would so hold. Then, why should this Act of Congress of March 3d. 1797, now embodied in Sec. 886 of the Revised Statutes, which is in derogation of the common law, and should therefore not be extended by implication, be held to apply to this case, which is so entirely

outside of the language used and of the cases which 17
were in contemplation when the Statute was passed?

So far as my researches have enabled me to ascertain, this is an entirely new question, and the Court below, after considerable argument upon the subject, hesitated much before admitting the disputed evidence. I have carefully examined all the cases in this Court, as far as they are reported, and have not found a single one which bears any analogy to this.

Walton vs. *United States*, 9 Wheat., 651, was 18
against a receiver of public money in a land office.

United States vs. *Buford*, 3 Pet., 12, was against a deputy commissary, for public moneys received in his official capacity.

Smith vs. *United States*, 5 Pet., 292, was upon a paymaster's bond for public moneys received by him.

Cox vs. *United States*, 6 Pet., 172, was upon a 19
bond of a navy agent for public money received by him.

United States vs. *Jones*, 8 Pet., 375, was to recover on a bond a balance of moneys remaining in the hands of B. G. Orr, advanced to him by the United States on an army contract.

Gratiot vs. *United States*, 15 Pet., 336, was an action against Gen'l Gratiot to recover public mo- 20
neys received by him as chief engineer for the United States.

United States vs. *Eckford's Executors*, 1 How., 250, was upon the bond of a collector of customs.

Hoyt vs. *United States*, 10 How., 109, was a suit against a collector of customs to recover a balance of moneys collected by him.

21 *Bruce* vs. *United States*, 17 How., 437, was brought on the bond of an Indian agent to recover a balance of public moneys in his hands.

United States vs. *Gaussen*, 19 Wal., 198, was upon the bond of a collector of customs.

I have also examined what cases I have been able to find contained in the several Circuit Court Reports, and found that they are all upon official bonds of disbursing officers, with
22 the exception of the case of *The United States vs. Lee*, 2 Cranch Circuit Court Reports, 462, which was an action to recover a balance of money advanced by the government to a contractor. In that case the objection was also made that transcripts from the Treasurer's books could not be received in evidence, because the Act of Congress of March 3rd, 1797, did not apply to it. The report of the case states: "The Court said that they had decided in the case of *The United States* vs. *King*, at October
23 Term, 1822, (not reported), that accounts so certified were evidence where the defendant was charged with money advanced to him by the United States for which he was to account. In that case money had been advanced to King on a contract for gun-locks. The present defendant was Commissioner of Claims, and received money in advance for the contingencies of his office for which he is called upon to account." Therefore the Court overruled the objection.

The case of *The United States* vs. *Jones*, 8 Pet.,
24 375, above cited, is similar to the last-mentioned case, and both are clearly within the Statute, because the government, having advanced its money for a specific purpose, has a right to call the person to whom it advanced it for an account of its money, and therefore the suit is one against a person accountable for public money.

But the case at bar is entirely different; here no money has been advanced to the manufacturers, but

the government has sold them stamps and they have 25
agreed to pay it the price for the same at a certain period of time. They are simply debtors to the government and not persons accountable for its money.

It is curious that even the Treasury officials seem to have sought for something to bring this case and probably others of a similar character within the Statute, by calling Bock, Schneider & Co., "Manufacturers and Internal Revenue Stamp Agents." (See *Printed Record*, fols. 22, 26 and 27.) They 26
were no more agents for the government for the sale of stamps, than a man is agent of his grocer when he buys a pound of coffee from him and promises to pay for it.

It is respectfully submitted that this case is not covered at all by Sec. 886 of the Revised Statutes, and that therefore the judgment should be reversed.

27

Point II.

The Court below also erred in refusing to charge the jury to deduct from the balance shown to be due by the Treasury account, the ten per cent. commissions on the same, as allowed by the Act of Congress of June 30th, 1864, amended in 1870 and incorporated in the Revised Statutes under Sec. 3425.

The Treasury transcript and statement of account 28
show an allowance of ten per cent. commissions on the first eleven hundred dollars (*Printed Record*, folios 21 and 28.) The allowance thus made shows very plainly that Bock, Schneider & Co. furnished their own die or design for the stamps, for otherwise no such commissions could have been allowed, and the counsel and Court therefore treated it as a conceded fact in the case that they did furnish their

29 own die. But the counsel for the government claimed that under Sec. 3624 of the Revised Statutes, embodying Sec 1 of Chap. 20 of the Acts of 1797, these commissions should not be allowed, because Bock, Schneider & Co. were "persons accountable for public money." That raises precisely the same question already discussed in Point I. and therefore requires no further argument.

It is respectfully insisted that for these errors the judgment should be reversed.

30

EDWARD SALOMON,
Attorney for Plaintiffs in Error.

31

32

In the Supreme Court of the United States.

OCTOBER TERM, 1879.

JOHN BECHTEL ET AL.
vs.
THE UNITED STATES. } No. 156.

ERROR TO UNITED STATES CIRCUIT COURT, SOUTHERN DISTRICT OF NEW YORK.

DEFENDANTS' BRIEF.

In the Supreme Court of the United States.

OCTOBER TERM, 1879.

JOHN BECHTEL ET AL.
vs.
THE UNITED STATES. } No. 156.

ERROR TO UNITED STATES CIRCUIT COURT, SOUTHERN DISTRICT OF NEW YORK.

DEFENDANTS' BRIEF.

STATEMENT.

Suit upon bond given to secure payment for match-stamps furnished upon credit under act of June 30, 1864, c. 173, § 161 (13 Stats., 294).

To fix the sum due upon this account, the government offered in evidence certain transcripts of accounts kept in the Treasury Department, showing a balance of $4,400 due to the United States, and also certified *copies* of the receipts given to the Commissioner of Internal Revenue for the stamps delivered, and on file in his office annexed to said transcripts, and authenticated by the Treasury

seal, together with the certificates of the Auditor and Comptroller of the existence of the above-stated balance upon the books of this department.

The defendants below—plaintiffs in error here—objected to the transcripts upon the ground that the statute authorizing their use applied only to suits between the United States and its officers, and not to those between the government and individuals; and to the receipts, because the originals should have been produced and the handwriting of the makers proved; and also that the receipts and certificates were not so authenticated as to make them evidence.

The district attorney, introducing no additional testimony, the defendants below did not put in any, but asked the court to instruct the jury that there was no evidence of any breach of the bond, which was refused, and they accepted.

They also claimed 10 per cent. commission under the act of June 30, 1864, as amended in 1879, now found in Revised Statutes, section 3425, which was not allowed, but a verdict was rendered for $4,400 principal and $1,052.30 interest from October, 1872, to the day of the trial.

This court can know nothing of what transpired, or was conceded, at the trial below except what appears of record. Nor do I. It is therefore denied that Bock & Co. furnished their own die, as asserted in plaintiff's statement of the case. (Brief of plaintiff in error, 2, folio 8.) If the defendants below (now plaintiffs) desired this fact they should have proved it. Keeping off the stand, to avoid being examined as to their receipt of stamps, they cannot ask this court to *infer* what was susceptible of proof.

STATUTES.

The bond in suit was given, and the claim for commissions arises, under the act of June 30, 1864, § 161, which, so far as it concerns this controversy, is substantially embodied in Revised Statutes: "Sec. 3425. The Commissioner of Internal Revenue is authorized to sell and *supply* to collectors, deputy-collectors, postmasters, stationers, *or any other persons*, at his discretion, adhesive stamps, or stamped paper, as herein provided for, in amounts of not less than fifty dollars, *upon the payment, at the time of delivery*, of the amount of duties said stamps or stamped paper, so sold or supplied, represent, and *may* allow, upon the aggregate amount of such stamps, the sum of *not exceeding five per centum* as commission to *such* purchasers; but the cost of any paper shall be paid by the purchaser of such stamped paper. The proprietor of articles named in Schedule A, who furnishes his own die or design for stamps to be used especially for his own proprietary articles, shall be allowed the following commissions: On amounts purchased at one time of not less than fifty dollars nor more than five hundred dollars, five per centum; and on amounts over five hundred dollars, ten per centum on the whole amount purchased: *Provided*, That the Commissioner may, from time to time, deliver to any manufacturer of friction or other matches, cigar-lights, or wax-tapers, a suitable quantity of adhesive or other stamps, such as may be prescribed for use in such cases, without prepayment therefor, on a credit not exceeding sixty days, requiring, in advance, such security as he may judge necessary to secure payment therefor to the Treasurer of the United States, within the time prescribed for such payment.

And upon all bonds or other securities taken by said Commissioner, under the provisions of this chapter, suits may be maintained by said Treasurer in the circuit or district court of the United States, in the several districts where any of the persons giving said bonds or other securities reside or may be found, in any appropriate form of action."

The now existing statute relating to transcripts, though very familiar to the court, is also here inserted: R. S., Sec. 886. When suit is brought *in any case of delinquency* [*of a revenue officer, *or other persons accountable for public money,*] a transcript from the books and proceedings of the Treasury Department, certified by the Register and authenticated under the seal of the Department, [† or, when the suit involves the account of the War or Navy Departments, certified by the Auditors respectively charged with the examination of those accounts, and authenticated under the seal of the Treasury Department,] shall be admitted as evidence, and the court trying the issue shall be authorized to grant judgment and award execution accordingly. And all *copies* of bonds, contracts, *or other papers* relating to, *or connected with* the settlement of any account *between the United States and an individual*, when certified by the Register, [or by such Auditor, as the case may be,] to be true copies of the originals on file, and authenticated under the seal of the Department, may be annexed to such transcripts, and shall have equal validity, and be entitled

* The words enclosed in these brackets are not found in the act of 1797, c. 20, § 2. last 2

† The words inclosed in these brackets are adopted from the act of March 3, 1817, c. 45, § 11, and are not in act of March 3, 1797, c. 20, § 2, which is the foundation of the rest of this section.

to the same degree of credit which would be due to the original papers if produced and authenticated in court: *Provided*, That where suit is brought upon a bond or other sealed instrument, and the defendant pleads '*non est factum*,' or makes his motion to the court, verifying such plea or motion by his oath, the court *may take the same into consideration*, and, *if it appears to be necessary for the attainment of justice, may* require the production of the original bond, contract, or other paper specified in such affidavit.

The words which I have above inclosed in the first brackets i. e., "of a revenue officer, or other person accountable for public money,"—*are not in the act of March* 3, 1797, *c.* 20, § 2 (1 Stats., 512–3), of which the foregoing section professes to be the reproduction, but first appear in the revision. The suit was brought and the transcripts certified, while this act of 1797, c. 20, § 2, was the only law relating thereto; and this made such certified transcript admissible in evidence "in *every* case of delinquency where suit has been, or shall be, instituted" (1 Stats., 512, bottom), but the Revised Statutes were adopted before the cause was brought to trial.

BRIEF.

I.

It is not necessary that the "person accountable for public money," against whom a Treasury transcript may be introduced, shall hold any office. In the case of United States *vs.* Jones (8 Peters, 375), the suit was against a contractor for Army supplies, and the amount of the debt was established by Treasury transcript.

The firm of Bock, Schneider & Co. *were* "accountable for public money." The phraseology of the act of June 30, 1864, c. 173, § 161, is to be noticed. That section commences by giving authority to the Commissioner of Internal Revenue "to *sell* to and supply collectors, deputy collectors, stationers, and other persons, *at his discretion*, with adhesive stamps," &c. It concludes with the proviso in question, "That the Commissioner of Internal Revenue may, from time to time, furnish, supply, and deliver to any manufacturer of friction or other matches, cigar-lights, or wax-tapers a suitable quantity of adhesive stamps," &c. (13 Stats., 294). In the condensation of the revision, as above printed, it will be seen that the words "furnish, supply, and" are omitted, leaving only the equivalent "deliver." Thus it appears that, using three synonyms for a deposit of *unsold* stamps, the word "sell," employed in the opening sentence of the section, is purposely dropped from this proviso. It did not contemplate a sale, but merely an entrusting of government stamps to a party, under certain restrictions, to be sold. It made no difference whether they were

sold in a lump as received, or were severally attached to bunches or packages of matches and sold with them. In either case the manufacturer was the agent of the government to the extent of the sum due for taxes, and was bound to pay the value of the stamps within sixty days after they were delivered to him. For this reason he is made and treated as an agent for the sale of stamps and an account kept with him in this capacity. (Record, 8, middle.)

It is different from the case of an income tax or a tax on one's own property: here the manufacturer has received from the United States its paper issue, representing a definite portion of its revenues and a fixed amount of public moneys, for which he is "accountable;" giving bond to "account" monthly. (Record, 7, folio 19; United States *vs.* Lee, 2 Cranch, Cir. Ct., 463, top.)

II.

The act of March 3, 1797, c. 20, § 2, is, however, the only provision applicable to this case. It was in force when this suit was instituted October 9, 1872 (Record 2). The transcripts were certified two days later, October 11, 1872 (Record, 8, folio 22), for use in this suit.

The first section of this act of 1797 attaches a forfeiture of commissions and a liability to pay interest to the neglect of "any revenue officer, or other person accountable for public money" to pay into the treasury the sum reported to be due to the United States upon the adjustment of his account (1 Stats., 512); but the next section is not thus limited in its application; it enacts, "that in *every* case of delinquency where suit has been, or shall be, instituted, a transcript from the books and proceedings of the treasury, certified by the register and au-

thenticated under the seal of the department, shall be admitted as evidence," &c. (*Ib.*, bottom). This section so far as it relates to copies of papers, and in every other particular affecting this case, except that just noticed, is identical with R. S. Sec. 886, and is, therefore, not reprinted in full here. The sole other difference arises from the incorporation into this section of section 11 of the act of March 3, 1817, c. 45, as indicated upon a previous page of this brief. (*Ante*, p. 4.)

But for the unauthorized interpolation into this reproduction of the *second* section of the act of March 3, 1797, c. 20, of language borrowed from, and found only in the *first* section of that act, there could have been no peg upon which to hang the objection made in this case. The first section, under certain circumstances of delinquency, or rather as to a particular *class* of delinquents, deprives of commissions and subjects to the payment of interest *only* "any revenue officer, or person accountable for public money." (1 Stats., 512.) The second section applies to "every case of delinquency," where suit is instituted; the third provides for judgment at the return term, "where suit shall be instituted against any person or persons indebted to the United States as aforesaid," unless the defendant supports a claim to credits under oath (1 Stats. 514); while the fourth section again extends to "suits between the United States and individuals" (1 Stats., 515). The fifth section likewise relates not only to "any revenue officer," but also to every "other person hereafter becoming indebted to the United States by bond or otherwise" (*Ib.*). So, the sixth section refers to "*all* writs of execution upon *any* judgment obtained for the use of the United States," &c. (*Ib.*);

and the next section thus fitly concludes the chapter: "that nothing in this act shall be construed to repeal, take away, or impair any legal remedy or remedies for the recovery of debts now due, or hereafter to be due to the United States, in law or equity, from *any person or persons whatsoever*, which remedies might be used if this act were not in force." (1 Stats., 515, 516, § 7.)

Not only is it in accordance with the ordinary force of the language used, and with right reason, that transcripts may be introduced in evidence in suits against persons holding no Federal office; but such was the construction long ago given to this section, and ever since acquiesced in. I can find no contrary decision. In a cause coming before him in the second circuit, from the district court for the southern district of New York, in 1825, Thompson, J., said: "The construction contended for on the part of the plaintiffs in error, that this provision, as to the admission of authenticated copies, is restricted to certain cases, where suits are commenced under authority given by the first section of the act, *cannot be sustained*, although it is not perceived why the present is not such a case. But *the provision is general, and applies to all cases where the evidence is required*, and is founded upon a proper precaution to guard against the loss of the original." (United States *vs.* Lent, 1 Paine, 420.) To same effect is United States *vs.* Lee (2 Cranch, Cir. Ct., 462–3), cited supra. It has been already observed that the suit of the United States *vs.* Jones (8 Peters, 375) was against a contractor, and transcripts were admitted.

R. S., "Sec. 5597. The repeal of the several acts embraced in said revision shall not AFFECT *any act done*, or any right *accruing* or accrued, *or any suit or proceedings had or commenced* in any civil cause before the said repeal,

but all *rights* and liabilities under said act shall continue, and may be enforced *in the same manner* as if said repeal had not been made; nor shall said repeal in any manner affect the right to any office, or change the term or tenure thereof."

The certification of the documents offered in evidence was certainly an act done in pursuance of statutory law, under which there was a right accruing to the United States to use them in support of its claim; nor can it be said that to take away this right would not *affect* the pending suit, in the manner of enforcing our rights.

The volume of the Revised Statutes was enacted in gross. There was no time or opportunity to debate its provisions. This was impracticable, so it had to be taken on trust, the avowed intent being not to change existing laws. To discuss each section and compare it with that on which it was founded, to ascertain the practical effect of any change of phraseology, would consume much more than an entire Congressional term, and would have to be begun anew with the next legislature. The labor would be like that of Sisyphus, or the web of Penèlope.

For this reason it was swallowed whole, with the idea of subsequently remedying any defects where an unhappy choice of phraseology unintentionally wrought a change in the law, contrary to the original design of the revision. These instances are rare. But, as a further precaution, the last-quoted section provides that the pre-existing law shall remain unaffected as to rights already accrued and causes already pending, including the manner of enforcing such rights in such actions. Therefore this case is to be heard and determined under the act of March 3, 1797, c. 20, § 3, and not under Revised Statutes, section 886, so far as the questions herein considered are concerned.

III.

The second objection is to the admission of the receipts. If this is untenable, as we think it manifestly is, the first question, and the admission of the transcripts, becomes entirely immaterial.

The aggregate of the receipts is $5,500. If properly received, they make out a *prima facie* case to that amount; which may be (and is) reduced by the credit contained in the transcript. (United States *vs.* Jones, 8 Peters, 375, 387.)

The two kinds of transcripts offered in this case are distinct. "There are two kinds of transcripts which the statute authorizes the proper officer to certify. First, a transcript from the 'books and proceedings of the Treasury'; and second, 'copies of bonds, contracts, and other papers,' &c., which remain on file and relate to the settlement." (Smith *vs.* United States, 5 Peters, 300.)

The succeeding paragraph of this opinion would seem to cover both transcripts in question here. "Under the first head are included charges of money advanced or paid by the department to the agent [for the disposition of stamps, in this instance], and an entry of items suspended, rejected, or placed to his credit. These all appear upon the books of the department. The decision made on the vouchers exhibited, and the statement of the amount, constitute, in part, 'the proceedings of the Treasury.' Under the second head, copies of papers which remain on file, and which have a relation to the settlement, may be certified. In this case it is essential that the officer certify that the transcripts 'are true copies of the originals, which remain on file.'" (*Ib.* and 301.)

It was so certified in this case. (Record, 8, middle.)

Not only are there two classes of transcripts, but the language relating to their use is different. The act of March 3, 1797, chap. 20, § 2, provides for the authentication of papers connected with any settlement "between the United States and an *individual*," and gives them like effect, whenever produced in court, with the originals. (1 Stats., 513, top.) The language of that portion of this section is preserved in R. S., sec. 886. United States *vs.* Jones, 8 Peters, 382, and other cases hereinbefore cited.

IV.

As to the refusal to allow commissions:

1. It by no means follows, even if the first $1,100 worth of stamps were printed from the manufacturers' own die—which, however, is itself a mere *inference of fact*—that the last $4,400 were also. The die might be broken, or withdrawn; or the manufacturers might choose to have stamps which they could either use or sell, as the circumstances of their business might require. It frequently happens that men make and vend an article of such a quality that they do not care to avow their participation in putting it upon the market. This court cannot draw and act upon such an inference of fact as is here claimed, even if a jury could—which is denied. As before remarked, the defendants could have proved this fact, if it were one, by their own testimony. Avoiding the witness stand, they cannot ask you to infer it.

Without the existence of this fact no claim could be sustained for commissions (R. S., sec. 3425, *ante*, p. 3). It is the whole foundation and condition precedent of such claim.

Without *proof in the record* of the existence of this fact, error cannot be predicated of the action of the court below in refusing commission.

2. Adolp. Bock & Co. were "accountable for public money" under act of March 3, 1797, c. 20, § 1, and R. S., sec. 3624. This point has already been sufficiently stated.

3. It is only a cash "purchase" as distinguished from a delivery on credit, that carries the right to commissions.

4. Independently of statute, one who denied his liability altogether, and litigated the claim, should have no commissions.

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